

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MATTHEW KATONA,  
Plaintiff  
v.  
DONNA ASURE, Warden, *et al.*,  
Defendants

CIVIL NO. 1:11-CV-1817  
(Judge Rambo)  
(Magistrate Judge Mehalchick)

**O R D E R**

Before the court is a January 5, 2015, report and recommendation of the magistrate judge (Doc. 159) to whom this matter was referred in which she recommends that Plaintiff's motion for partial summary judgment be granted in favor of Plaintiff and against Defendant James Shea on the issue of liability only. The magistrate judge also recommended that the Medical Defendants' motion for summary judgment be granted. The magistrate judge further recommended that final judgment be entered in favor of the Medical Defendants and against Plaintiff and that they be terminated from this action upon the expiration of the time to appeal. No objections to the report and recommendation have been filed.

Upon review of the report and recommendation and law applicable to the facts of this case, **IT IS HEREBY ORDERED THAT:**

1) The court adopts in part and rejects in part the report and recommendation of the magistrate judge (Doc. 159):

A) The court adopts the report and recommendation as follows:

i) Plaintiff's motion for partial summary judgment against Defendant James Shea as to liability only (Doc. 144) is **GRANTED**. The Clerk shall defer the entry of judgment in favor of plaintiff Matthew Katona and against Defendant James Shea as to his **liability only** under Count One of the second amended complaint (Doc. 116, at 7–8), which asserts an Eighth Amendment excessive force claim pursuant to 42 U.S.C. § 1983. The determination as to damages, if any, is reserved for jury trial.

ii) The Medical Defendants' (Wendy M. Johnson, Michelle L. Oswald and Jane Doe (facility psychiatrist)) motion for summary judgment (Doc. 151) is **GRANTED**.

B) The court rejects the report and recommendation as follows:

i) The court declines to have final judgment entered as to the Medical Defendants as there are many other defendants whose claims against them must be resolved and, depending on the outcome, may present applicable issues that should not be appealed piece meal, which could place a burden on Plaintiff if he is unsuccessful in his remaining claims and desires to take an appeal.

ii) The Clerk of Court shall DEFER the entry of judgment against the Medical Defendants until the conclusion of this case.

2) This case is remanded to Magistrate Judge Mehalchick for further proceedings .

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s/Sylvia H. Rambo  
United States District Judge

Dated: February 3, 2015.